



# Senate

General Assembly

**File No. 152**

February Session, 2006

Substitute Senate Bill No. 496

*Senate, March 28, 2006*

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING ITEM PRICING OF CONSUMER COMMODITIES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 21a-79 of the 2006 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2006*):

4 (a) For the purposes of this section (1) "consumer commodity" and  
5 "unit of a consumer commodity" have the same meaning as in section  
6 21a-73, except that consumer commodity does not include alcoholic  
7 liquor, as defined in subdivision (3) of section 30-1, as amended, or a  
8 carbonated soft drink container; (2) "carbonated soft drink container"  
9 means an individual, separate, sealed glass, metal or plastic bottle, can,  
10 jar or carton containing a carbonated liquid soft drink sold separately  
11 or in packages of not more than twenty-four individual containers; (3)  
12 "universal product coding" means any system of coding that entails  
13 electronic pricing; (4) an electronic shelf labeling system is an  
14 electronic system that utilizes an electronic device attached to the shelf

15 or at any other point of sale, immediately below or above the item, that  
16 conspicuously and clearly displays to the consumer the unit price and  
17 the price of the consumer commodity. Such electronic shelf labeling  
18 system reads the exact same data as the electronic cash register  
19 scanning system; and (5) an electronic pricing system is a system that  
20 utilizes the universal product coding bar code by means of a scanner in  
21 combination with the cash register to record and total a customer's  
22 purchases.

23 (b) (1) (A) Any person, firm, partnership, association or corporation  
24 that utilizes universal product coding in totaling a retail customer's  
25 purchases shall mark or cause to be marked each consumer  
26 commodity that bears a Universal Product Code with its retail price.

27 (B) Any person, firm, partnership, association or corporation that  
28 utilizes an electronic pricing system in totaling a retail consumer's  
29 purchases shall provide each consumer with an item-by-item digital  
30 display, plainly visible to the consumer as each universal pricing code  
31 is scanned, of the price of each consumer commodity or carbonated  
32 soft drink container, or both, selected for purchase by such consumer  
33 prior to accepting payment from such consumer for such commodity  
34 or container. The provisions of this subparagraph do not apply to any  
35 person, firm, partnership, association or corporation operating in a  
36 retail sales area of not more than ten thousand square feet.

37 (2) The provisions of subparagraph (A) of subdivision (1) of this  
38 subsection shall not apply if: (A) The Commissioner of Consumer  
39 Protection, by regulation, allows for the utilization of electronic shelf  
40 labeling systems; (B) a retailer is granted approval to utilize an  
41 electronic shelf labeling system by the commissioner; (C) the retailer  
42 has demonstrated to the satisfaction of the commissioner that such  
43 electronic shelf labeling system is supported by an electronic pricing  
44 system that utilizes universal product coding in totaling a retail  
45 customer's purchases; and (D) the retailer has received approval for  
46 such an electronic pricing system by the commissioner.

47 (3) The provisions of subparagraph (A) of subdivision (1) of this

48 subsection shall not apply if: (A) The retailer has met the conditions of  
49 subdivision (2) of this subsection; and (B) the retailer has received  
50 permission by the commissioner to suspend implementation of the  
51 electronic pricing system for a period not to exceed thirty days in order  
52 to allow the retailer or an agent acting on behalf of the retailer to reset,  
53 remodel, repair or otherwise modify such system at the retail  
54 establishment.

55 (4) The provisions of subparagraph (A) of subdivision (1) of this  
56 subsection shall not apply if: (A) The retailer applies and is approved  
57 for an exemption by the Commissioner of Consumer Protection, (B) the  
58 retailer demonstrates to the satisfaction of the commissioner that the  
59 retailer has achieved price scanner accuracy of at least ninety-eight per  
60 cent, as determined by the latest version of the National Institute of  
61 Standards and Technology Handbook 130, "Examination Procedures  
62 for Price Verification, as adopted by The National Conference on  
63 Weights and Measures", (C) the retailer pays an application fee, to be  
64 used to offset annual inspection costs, of two hundred fifty dollars if  
65 the premises consists of less than twenty thousand square feet of retail  
66 space and five hundred dollars if the premises consists of twenty  
67 thousand square feet or more of retail space, (D) the retailer makes  
68 available a consumer price test scanner approved by the commissioner  
69 and located prominently in an easily accessible location for each  
70 twelve thousand square feet of retail floor space, or fraction thereof,  
71 and (E) price accuracy inspections resulting in less than ninety-eight  
72 per cent price scanner accuracy are reinspected without penalty and  
73 the retailer pays a two hundred dollar reinspection fee.

74 ~~[(4)]~~ (5) Notwithstanding any provision of this subsection, consumer  
75 commodities that are offered for sale and that are located on an end  
76 cap display within the retail sales area are not subject to [any  
77 requirement for the utilization of an electronic shelf labeling system]  
78 the requirements specified under this subsection, provided any  
79 information that would have been available to a consumer [with the  
80 use of an electronic shelf labeling system] pursuant to this section is  
81 clearly and conspicuously posted on or adjacent to such end cap. For

82 purposes of this subdivision, "end cap display" means the location in  
83 the retail sales area that is at the immediate end of an aisle.

84 [(5)] (6) Consumer commodities that are advertised in a publicly-  
85 circulated printed form as being offered for sale at a reduced price for  
86 a minimum seven-day period need not be individually marked at such  
87 reduced retail price, provided such consumer commodities are  
88 individually marked with their regular retail price and a conspicuous  
89 sign is adjacent to such consumer commodities, which sign discloses:  
90 (A) The reduced retail price and its unit price; and (B) a statement that  
91 the item will be electronically priced at the reduced price by the  
92 cashier.

93 [(6)] (7) If a consumer commodity is offered for sale [at a reduced  
94 price, in accordance with subdivision (5) of this subsection] and its  
95 electronic price is higher than the [reduced price on the sign that is  
96 adjacent to the consumer commodity] posted price, then one item of  
97 such consumer commodity, up to a value of twenty dollars, shall be  
98 given to the consumer [upon demand] at no cost. A conspicuous sign  
99 shall adequately disclose to the consumer that in the event the  
100 electronic price is higher than the [reduced] posted retail price, one  
101 item of such consumer commodity shall be given to the customer  
102 [upon demand] at no cost.

103 (c) (1) The Commissioner of Consumer Protection may adopt  
104 regulations, in accordance with the provisions of chapter 54,  
105 concerning the marking of prices and use of universal product coding  
106 on each unit of a consumer commodity.

107 (2) The Commissioner of Consumer Protection may adopt  
108 regulations, in accordance with the provisions of chapter 54,  
109 designating not more than twelve consumer commodities that need  
110 not be marked in accordance with subdivision (1) of subsection (b) of  
111 this section and specifying the method of providing adequate  
112 disclosure to consumers to insure that the electronic pricing of the  
113 designated consumer commodities is accurate. The commissioner may  
114 establish by regulation methods to protect consumers against

115 electronic pricing errors of such designated consumer commodities  
 116 and to insure that the electronic prices of such designated consumer  
 117 commodities are accurate. Among the methods that the commissioner  
 118 may consider are conditions similar to those set forth in subdivision (5)  
 119 of subsection (b) of this section.

120 (d) The Commissioner of Consumer Protection, after providing  
 121 notice and conducting a hearing in accordance with the provisions of  
 122 chapter 54, may issue a warning citation or impose a civil penalty of  
 123 not more than one hundred dollars for the first offense and not more  
 124 than five hundred dollars for each subsequent offense on any person,  
 125 firm, partnership, association or corporation that violates any  
 126 provision of subsection (b) of this section or any regulation adopted  
 127 pursuant to subsection (c) of this section. Any person, firm,  
 128 partnership, association or corporation that violates any provision of  
 129 subsection (b) of this section or any regulation adopted pursuant to  
 130 subsection (c) of this section shall be fined not more than two hundred  
 131 dollars for the first offense nor more than one thousand dollars for  
 132 each subsequent offense. Each violation with respect to all units of a  
 133 particular consumer commodity on any single day shall be deemed a  
 134 single offense.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2006	21a-79

**GL**            *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Consumer Protection, Dept.	GF - Cost	62,000	10,000
Consumer Protection, Dept.	GF - Revenue Gain	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

The bill exempts a retailer who uses Universal Product Coding (UPC) from item pricing requirements under certain conditions.

The bill also requires retailers to pay a \$250 application fee if they have less than 20,000 square feet, or \$500 if the retailer has more than 20,000 square feet, and a \$200 fee for a re-inspection, for the exemption. The application fee is to be used to offset the Department of Consumer Protection's inspection costs. It is estimated that DCP would incur costs of \$62,000 in FY 07 related to training, software and equipment for inspection. In FY 08, DCP would incur costs of \$10,000 related to training. Depending on how many retailers apply for the exemption, the state will experience at least a minimal revenue gain.

### **The Out Years**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$	FY 11 \$
Consumer Protection, Dept.	GF - Cost*	10,300	10,609	10,927
Consumer Protection, Dept.	GF - Revenue Gain	Minimal	Minimal	Minimal

Note: GF=General Fund

\*These figures have been adjusted for inflation at a rate of 3%

**Municipal Impact:** None

**OLR Bill Analysis**  
**sSB 496**

**AN ACT CONCERNING ITEM PRICING OF CONSUMER  
COMMODITIES.**

**SUMMARY:**

This bill (1) creates an exemption from the law that requires retailers to mark each item with its price if they use Universal Product Coding (UPC) to scan and total a consumer's purchases ("item pricing"), (2) expands the applicability of the law that requires retailers to give a free item if a consumer is charged more for an item than its posted price, and (3) makes technical changes in the law exempting goods offered for sale on an end cap of a store's aisle from item pricing.

EFFECTIVE DATE: October 1, 2006

**ITEM PRICING EXEMPTION**

The bill exempts a retailer using UPC to scan and total a customer's purchases from the item pricing requirement if it (1) demonstrates to the Department of Consumer Protection (DCP) commissioner's satisfaction that its scanner accuracy is at least 98%, (2) pays an application fee of \$250 if the retailer has less than 20,000 square feet of retail space or \$500 if it has more, (3) makes at least one DCP-approved consumer test scanner available for every 12,000 square feet of retail space, or fraction thereof, in easily-accessible prominent locations, (4) is approved for the exemption by DCP, and (5) maintains 98% accuracy when re-inspected and pays the \$200 re-inspection fee. The bill requires scanner accuracy to be determined according to the rules in the National Institute of Standards and Technology Handbook 130, "Examination Procedures for Price Verification, as adopted by the National Conference on Weights and Measures." The bill provides that the application fees, but not the re-inspection fees, must be used to

offset inspection costs.

**ONE FREE ITEM**

The bill requires a retailer to give an item free to a consumer, up to a value of \$20, if a “consumer commodity” is offered for sale and it scans at a higher price than its posted price. The law defines “consumer commodity” as a food, drug, device, cosmetic, or other article that is customarily produced for retail sale and for consumption by individuals for purposes of personal care or to perform household chores and that is usually consumed or spent in the course of use (CGS § 21a-73). Under a current law, a retailer is only required to give the free item if (1) the item is advertised in a public circular, (2) the sale lasts at least seven days, (3) the item is exempt from item pricing because it is marked with its pre-sale price and the sale price is posted on an adjacent sign, and (4) it scans at a higher price than the reduced price.

**COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 15    Nay 0    (03/14/2006)